

SECOND REGULAR SESSION

# SENATE BILL NO. 857

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAXWELL.

Read 1st time January 18, 2000, and 1,000 copies ordered printed.

3143S.03I

TERRY L. SPIELER, Secretary.

## AN ACT

To amend chapter 276, RSMo, by adding thereto thirteen new sections relating to livestock.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 276, RSMo, is amended by adding thereto thirteen new sections, to be known as sections 276.700, 276.703, 276.706, 276.709, 276.712, 276.715, 276.718, 276.721, 276.724, 276.727, 276.730, 276.733 and 276.734, to read as follows:

**276.700. As used in sections 276.700 to 276.733, the following terms mean:**

(1) "Commerce", commerce between Missouri and any state, territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the state;

(2) "Dealer", any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his or her own account or as the employee or agent of the vendor or purchaser;

(3) "Live poultry dealer", any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another, if poultry is obtained by such person in commerce, or if poultry obtained by such person is sold or shipped in commerce, or if poultry products from poultry obtained by such person are sold or shipped in commerce;

(4) "Livestock", cattle, sheep, swine, horses, mules, poultry or goats, whether live or dead;

(5) "Livestock products", all products and by-products, other than meats and meat food products, of the slaughtering and meat-packing industry derived in whole or in part from livestock;

- (6) "Market agency", any person engaged in the business of:
- (a) Buying or selling in commerce livestock on a commission basis; or
  - (b) Furnishing stockyard services;
- (7) "Meat food products", all products and by-products of the slaughtering and meat-packing industry, if edible;
- (8) "Packer", any person engaged in the business of:
- (a) Buying livestock in commerce for purposes of slaughter; or
  - (b) Manufacturing or preparing meats or meat food products for sale or shipment in commerce; or
  - (c) Marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce;
- (9) "Poultry", chickens, turkeys, ducks, geese, and other domestic fowl;
- (10) "Poultry grower", any person engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such person or by another, but not an employee of the owner of such poultry;
- (11) "Poultry growing arrangement", any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accord with another's instructions, for slaughter;
- (12) "Poultry product", any product or by-product of the business of slaughtering poultry and processing poultry after slaughter;
- (13) "Stockyard", any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other enclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce;
- (14) "Stockyard owner", any person engaged in the business of conducting or operating a stockyard;
- (15) "Stockyard services", services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of livestock.

**276.703. It shall be unlawful for any packer with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:**

- (1) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or
- (2) Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject any particular

**person**

**respect whatsoever; or**

**Sell or otherwise transfer to or for any other packer or any live poultry dealer,**

**dealer, any article for the purpose or with the effect of apportioning the supply between**

**restraining commerce or of creating a monopoly; or**

**Sell or otherwise transfer to or for any other person, or buy or otherwise receive**

**manipulating or controlling prices, or of creating a monopoly in the acquisition of, selling, or dealing in, any article, or of restraining commerce; or**

**(5)**

**effect of manipulating or controlling prices, or of creating a monopoly in the of, buying, selling, or dealing in, any article, or of restraining commerce; or**

**(6)**

**(a) Apportion territory for carrying on business; or**

**Apportion purchases or sales of any article; or**

**(c)**

**(7) Conspire, combine, agree, or arrange with any other person to do, or aid or the doing of, any act made unlawful by this section.**

**276.706.**

**exceed five hundred thousand dollars in cash sales, and all inventories of, or or proceeds from meat, meat food products, or livestock products derived therefrom,**

**of such livestock until full payment has been received by such unpaid sellers. Payment**

**not be considered to have been made if the seller receives a payment instrument which**

**dishonored instrument to the packer and by filing such notice with the director of the of agriculture.**

**2**

**does not expressly extend credit to the buyer.**

**The director of the department of agriculture shall from time to time ascertain,**

**within the definition of stockyard pursuant to section 276.700, and shall give notice**

**to the stockyard owners concerned, and give public notice thereof by posting copies**

**determine. After the giving of such notice to the stockyard owner and to the public, the shall remain subject to the provisions of sections 276.700 to 276.733 until like**

notice is given by the director of the department of agriculture that such stockyard no longer comes within such definition.

**276.712.** After the expiration of thirty days after the director of the department of agriculture has given public notice that any stockyard is within the definition of stockyard pursuant to section 276.709, by posting copies of such notice in the stockyard, no person shall carry on the business of a market agency or dealer at such stockyard unless:

(1) The stockyard owner has determined that his or her services will be beneficial to the business and welfare of said stockyard, its patrons, and customers, which determination shall be made on a basis which is not unreasonable or unjustly discriminatory, and has given written authorization to such person; and

(2) He or she has registered with the director of the department of agriculture, under such rules as the director of the department of agriculture may prescribe, his or her name and address, the character of business in which he or she is engaged, and the kinds of stockyard services, if any, which he or she furnishes at such stockyard. Every other person operating as a market agency or dealer as defined in section 276.700 may be required to register in such manner as the director of the department of agriculture may prescribe. Whoever violates the provisions of this section is guilty of a class B misdemeanor for each such offense.

**276.715.** Whenever, after due notice and hearing, the director of the department of agriculture finds any registrant is insolvent or has violated any provisions of sections 276.700 to 276.733, he or she may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five days, unless suspended or modified or set aside by the director of the department of agriculture or a court of competent jurisdiction. If the director of the department of agriculture finds any packer is insolvent, he or she may after notice and hearing issue an order requiring such packer to cease and desist from purchasing livestock while insolvent, or while insolvent purchasing livestock except under such conditions as the director of the department of agriculture may prescribe to effectuate the purposes of sections 276.700 to 276.733.

**276.718.** All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful. Rates and charges based upon percentages of the gross sales prices of livestock shall not be prohibited merely because they are based upon such percentages rather than on a per head basis.

**276.721. 1.** Within sixty days after the director of the department of agriculture has given public notice that a stockyard is within the definition of stockyard pursuant

to section 276.709, by posting copies of such notice in the stockyard, the stockyard owner and every market agency at such stockyard shall file with the director of the department of agriculture, and print and keep open to public inspection at the stockyard, schedules showing all rates and charges for the stockyard services furnished by such person at such stockyard. If a market agency commences business at the stockyard after the expiration of such sixty days such schedules must be filed before any stockyard services are furnished.

2. Such schedules shall plainly state all such rates and charges in such detail as the director of the department of agriculture may require, and shall also state any rules or regulations which in any manner change, affect, or determine any part or the aggregate of such rates or charges, or the value of the stockyard services furnished. The director of the department of agriculture may determine and prescribe the form and manner in which such schedules shall be prepared, arranged, and posted, and may from time to time make such changes in respect thereto as may be found expedient.

3. No changes shall be made in the rates or charges so filed and published, except after ten days' notice to the director of the department of agriculture and to the public filed and published as required by sections 276.700 to 276.733, which shall plainly state the changes proposed to be made and the time such changes will go into effect; but the director of the department of agriculture may, for good cause shown, allow changes on less than ten days' notice, or modify the requirements of this section in respect to publishing, posting, and filing of schedules, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

4. The director of the department of agriculture may reject and refuse to file any schedule tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the director of the department of agriculture shall be void and its use shall be unlawful.

5. Whenever there is filed with the director of the department of agriculture any schedule, stating a new rate or charge, or a new regulation or practice affecting any rate or charge, the director of the department of agriculture may either upon complaint or upon his or her own initiative without complaint, at once, and if he or she so orders without answer or other formal pleading by the person filing such schedule, but upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, charge, regulation, or practice, and pending such hearing and decision thereon the director of the department of agriculture, upon filing with such schedule and delivering to the person filing it a statement in writing of his or her reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, regulation, or practice, but not for a longer period than thirty days beyond the time

when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, regulation, or practice goes into effect, the director of the department of agriculture may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If any such hearing cannot be concluded within the period of suspension the director of the department of agriculture may extend the time of suspension for a further period not exceeding thirty days, and if the proceeding has not been concluded and an order made at the expiration of such thirty days, the proposed change of rate, charge, regulation, or practice shall go into effect at the end of such period.

6. After the expiration of the sixty days referred to in this section, no person shall carry on the business of a stockyard owner or market agency unless the rates and charges for the stockyard services furnished at the stockyard have been filed and published in accordance with this section and the orders of the director of the department of agriculture made thereunder; nor charge, demand, or collect a greater or less or different compensation for such services than the rates and charges specified in the schedules filed and in effect at the time; nor refund or remit in any manner any portion of the rates or charges so specified, but this shall not prohibit a cooperative association of producers from bona fide returning to its members, on a patronage basis, its excess earnings on their livestock, subject to such regulations as the director of the department of agriculture may prescribe; nor extend to any person at such stockyard any stockyard services except such as are specified in such schedules.

7. Whoever fails to comply with the provisions of this section is guilty of a class B misdemeanor for each such offense.

8. Whoever willfully fails to comply with the provisions of this section is guilty of a class A misdemeanor.

276.724. 1. It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful.

2. It shall be the responsibility and right of every stockyard owner to manage and regulate his or her stockyard in a just, reasonable, and nondiscriminatory manner, to prescribe rules and regulations and to require those persons engaging in or attempting to engage in the purchase, sale, or solicitation of livestock at such stockyard to conduct their operations in a manner which will foster, preserve, or insure an efficient, competitive public market. Such rules and regulations shall not prevent a registered market agency or dealer from rendering service on other markets or in occasional and incidental off-market transactions.

**276.727. 1. If any person subject to sections 276.700 to 276.733 violates any of the provisions of sections 276.700 to 276.733, or of any order of the director of the department of agriculture pursuant to sections 276.700 to 276.733, relating to the purchase, sale, or handling of livestock, the purchase or sale of poultry, or relating to any poultry growing arrangement, he or she shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.**

**2. Such liability may be enforced either:**

**(1) By complaint to the director of the department of agriculture as provided in sections 276.700 to 276.733; or**

**(2) By suit in any circuit court.**

**3. This section shall not in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of sections 276.700 to 276.733 are in addition to such remedies.**

**276.730. Whenever in any investigation pursuant to the provisions of sections 276.700 to 276.733, or in any investigation instituted by petition of the stockyard owner, market agency, or dealer concerned, which petition is authorized to be filed, the director of the department of agriculture after full hearing finds that any rate, charge, regulation, or practice of any stockyard owner, market agency, or dealer, for or in connection with the buying or selling on a commission basis or otherwise, receiving, marketing, feeding, holding, delivery, shipment, weighing, or handling, not in commerce, of livestock, causes any undue or unreasonable advantage, prejudice, or preference as between persons or localities in intrastate commerce in livestock on the one hand and interstate or foreign commerce in livestock on the other hand, or any undue, unjust, or unreasonable discrimination against interstate or foreign commerce in livestock, which is hereby forbidden and declared to be unlawful, the director of the department of agriculture shall prescribe the rate, charge, regulation, or practice thereafter to be observed, in such manner as, in his or her judgment, will remove such advantage, preference, or discrimination. Such rates, charges, regulations, or practices shall be observed while in effect by the stockyard owners, market agencies, or dealers to such proceeding affected thereby.**

**276.733. 1. It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock.**

**2. Whenever complaint is made to the director of the department of agriculture**

by any person, or whenever the director of the department of agriculture has reason to believe, that any stockyard owner, market agency, or dealer is violating the provisions of subsection 1 of this section, the director of the department of agriculture after notice and full hearing may make an order that he or she shall cease and desist from continuing such violation to the extent that the director of the department of agriculture finds that it does or will exist.

**3. The attorney general shall enforce the provisions of sections 276.700 to 276.733.**

**4. No rule or portion of a rule promulgated pursuant to the authority of sections 276.700 to 276.733 shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.**

**276.734. A packer located in Missouri may not own livestock intended for slaughter for fourteen days or more prior to slaughter.**

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